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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 IN RE: FACEBOOK, INC. CONSUMER
14 PRIVACY USER PROFILE LITIGATION

15 MDL No. 2843
16 Case No. 18-md-02843-VC-JSC

17 This document relates to:

18 **ALL ACTIONS**

19 **DECLARATION OF MATTHEW S.**
20 **MELAMED IN SUPPORT OF**
21 **PLAINTIFFS' OPPOSITION TO**
22 **FACEBOOK INC.'S MOTION IN**
23 **SUPPORT OF ITS CLAIM OF**
24 **CONFIDENTIALITY**

25 Judge: Hon. Vince Chhabria and
26 Hon. Jacqueline Scott Corley
27 Courtroom: 4, 17th Floor

28

1 I, Matthew S. Melamed, declare and state as follows:

2 1. I am an attorney licensed in the State of California and admitted to the United
 3 States District Court for the Northern District of California. I am Senior Counsel at Bleichmar
 4 Fonti & Auld LLP, Co-Lead Counsel for Plaintiffs in *In re Facebook, Inc. Consumer Privacy*
 5 *User Profile Litigation*, Case No. 18-md-02843-VC-JSC (the “MDL”), and a member in good
 6 standing of the bar of the State of California and of this Court.

7 2. I have personal knowledge of the facts set forth herein and, if called as a
 8 witness, could and would testify competently to them. This declaration is made in support of
 9 Plaintiffs’ Opposition to Facebook’s Inc.’s Motion in Support of Its Claim of Confidentiality
 10 (“Brief”).

11 3. Each of the links to articles and reports provided herein remains live and
 12 publicly available as of the date of the date of this declaration.

13 4. On November 24, 2018, the Guardian published an article about a large
 14 collection of documents relating to Facebook seized by the U.K. Parliament. Carole
 15 Cadwalladr, *Parliament seizes cache of Facebook internal papers* (Nov. 24, 2018),
 16 [https://www.theguardian.com/technology/2018/nov/24/mps-seize-cache-facebook-internal-
 17 papers](https://www.theguardian.com/technology/2018/nov/24/mps-seize-cache-facebook-internal-papers). The article stated that the documents, which were seized from an app developer
 18 company called Six4Three, allegedly “contain significant revelations about Facebook
 19 decisions on data and privacy controls that led to the Cambridge Analytica scandal.”

20 5. On December 5, 2018, Damian Collins MP, Chair of the Digital, Culture,
 21 Media and Sport Committee of the U.K. House of Commons, published a “[s]ummary of key
 22 issues from the Six4Three files.”

23 [https://www.parliament.uk/globalassets/documents/commons-committees/culture-media-and-
 24 sport/Note-by-Chair-and-selected-documents-ordered-from-Six4Three.pdf](https://www.parliament.uk/globalassets/documents/commons-committees/culture-media-and-sport/Note-by-Chair-and-selected-documents-ordered-from-Six4Three.pdf). Attached thereto
 25 were certain of the documents acquired by Parliament from Six4Three.

26 6. February 14, 2019, the Digital, Culture, Media and Sport Committee of the
 27 U.K. House of Commons published a report titled “Disinformation and ‘fake news’: Final
 28

1 Report" (the "Report"), available at
 2 <https://publications.parliament.uk/pa/cm201719/cmselect/cmcumeds/1791/1791.pdf>. The
 3 Report contained a section titled "Facebook and the Six4Three case." *Id.* ¶¶ 77-117. In that
 4 section, the Report described the steps undertaken by the Digital, Culture, Media and Sport
 5 Committee to acquire the documents from Six4Three. The Report also discussed information
 6 from and linked to certain of the documents acquired by Parliament from Six4Three. The
 7 Report also provided Facebook's response to the publication of "the Six4Three documents."
 8 *Id.* ¶¶ 118-125.

9 7. On November 6, 2019, NBC News published an article about a large collection
 10 of documents relating to Facebook and its litigation with an app developer called Six4Three.
 11 Olivia Solon and Cyrus Farivar, *Leaked documents show Facebook leveraged user data to*
 12 *fight rivals and help friends*, NBC News (Nov. 6, 2019),
 13 [https://www.nbcnews.com/news/all/leaked-documents-show-facebook-leveraged-user-data-](https://www.nbcnews.com/news/all/leaked-documents-show-facebook-leveraged-user-data-fight-rivals-help-n1076986)
 14 [fight-rivals-help-n1076986](https://www.nbcnews.com/news/all/leaked-documents-show-facebook-leveraged-user-data-fight-rivals-help-n1076986). The article contained links to pdfs of depositions, emails,
 15 presentations and other exhibits from Six4Three's lawsuit against Facebook. Plaintiffs
 16 downloaded the documents from links to them provided at the above-listed URL, including the
 17 document Plaintiffs filed on November 19, 2020 as Exhibit C to Dkt. No. 526.

18 8. Numerous articles have been written about and linked to the Six4Three
 19 documents, including but not limited to the following:

- 20 • Kurt Wagner, *Here's why an app for finding bikini pics is Facebook's latest*
 21 *headache*, Vox/Recode (Nov. 29, 2018),
<https://www.vox.com/2018/11/29/18118369/facebook-six4three-lawsuit-explained-pikinis-sealed-documents>.
- 22 • Deepa Seetharaman, Stu Woo and Kirsten Grind, *Facebook's Zuckerberg at*
 23 *Center of Emails Released by U.K. Parliament*, The Wall Street Journal (Dec.
 24 5, 2018), <https://www.wsj.com/articles/u-k-releases-internal-facebook-emails-deliberating-data-access-1544022496>.
- 25 • Elizabeth Dwoskin, Craig Timberg and Tony Romm, *Facebook allegedly*
 26 *offered advertisers special access to users' data and activities, according to*
 27 *documents released by British lawmakers*, The Washington Post (Dec. 5, 2018),
<https://www.washingtonpost.com/technology/2018/12/05/facebook-allegedly->

[offered-advertisers-special-access-users-data-activities-according-documents-released-by-british-lawmakers/](http://www.theguardian.com/technology/2013/sep/05/offered-advertisers-special-access-users-data-activities-according-documents-released-by-british-lawmakers/).

- Adam Santariano and Mike Issac, *Facebook Used People's Data to Favor Certain Partners and Punish Rivals, Documents Show*, The New York Times (Dec. 5, 2018), <https://www.nytimes.com/2018/12/05/technology/facebook-documents-uk-parliament.html>.
- Kevin Roose, *Facebook Emails Show Its Real Mission: Making Money and Crushing Competition*, The New York Times (Dec. 5, 2018), <https://www.nytimes.com/2018/12/05/technology/facebook-emails-privacy-data.html>.
- *Facebook accused of striking 'secret deals over user data'*, BBC News (Dec. 5, 2018), <https://www.bbc.com/news/technology-46456695>.
- Sue Halpern, *Facebook's Very Bad Month Just Got Worse*, The New Yorker (Dec. 5, 2018), <https://www.newyorker.com/tech/annals-of-technology/facebook-s-very-bad-month-just-got-worse>.
- Irina Ivanova, *Facebook let some companies exploit users' friends data, U.K. email dump alleges*, CBS News (Dec. 5, 2018), <https://www.cbsnews.com/news/facebook-gave-some-companies-preferential-user-data-according-to-uk-parliament/>.
- Kalev Leetaru, *Facebook Still Doesn't Understand What Privacy Means*, Forbes (Dec. 5, 2018), <https://www.forbes.com/sites/kalevleetaru/2018/12/05/facebook-still-doesnt-understand-what-privacy-means/?sh=34678fad3cde>.
- Katie Collins and Queenie Wong, *Internal Facebook documents highlight how valuable user data is*, CNET (Dec. 5, 2018), <https://www.cnet.com/news/sensitive-internal-facebook-documents-published-by-uk-parliament/>.
- Sara Salinas, *Internal Facebook emails show how the company considered giving others special access to your personal data*, CNBC (Dec. 5, 2018), <https://www.cnbc.com/2018/12/05/internal-facebook-emails-discuss-payments-for-data-special-access.html>.
- Issie Lapowsky, *Facebook's UK Document Dump Suggests User Privacy Was Sacrificed for Growth*, Wired (Dec. 5, 2018), <https://www.wired.com/story/uk-facebook-document-dump/>.
- Will Oremus, *Facebook Never Really Cared About Connecting the World*, Slate (Dec. 6, 2018), <https://slate.com/business/2018/12/facebook-emails-lawsuit-embarrassing-mark-zuckerberg.html>.

- 1 • Sajana Karanth, *British Lawmakers Accuse Facebook of 'Intentionally'*
2 *Violating UK Privacy Laws*, Huffpost (Feb. 18, 2019),
3 https://www.huffpost.com/archive/in/entry/united-kingdom-facebook-report-privacy_in_5c6a7e4fe4b033a799443f97.
- 4 • Julia Carrie Wong, *Confidential emails sent by Facebook executives leaked*
5 *online*, The Guardian (Feb. 22, 2019),
6 <https://www.theguardian.com/technology/2019/feb/22/facebook-new-emails-leaked-six4three-lawsuit-user-data>.
- 7 • Sue Halpern, *Why the U.K. Condemned Facebook for Fuelling Fake News*, The
8 New Yorker (Feb. 22, 2019), <https://www.newyorker.com/tech/annals-of-technology/why-the-uk-condemned-facebook-for-fuelling-fake-news>.
- 9 • Scott Rosenberg, *As U.S. dithers on Facebook, Europe pounces*, Axios (Feb.
10 19, 2019), <https://wwwaxios.com/as-us-dithers-on-facebook-europe-pounces-1550533412-7f16fa53-b2d2-4558-8304-57bec0e53b49.html>.
- 11 • Frank Bajak, *How a bikini photo app could shed public light on Facebook's*
12 *inner workings: 'It just makes me feel like a bad person'*, Chicago Tribune
13 (Oct. 3, 2019), <https://www.chicagotribune.com/nation-world/ct-nw-facebook-pikini-anti-trust-20191003-rb5bga2kt5g6xihz6xhifagbni-story.html>.
- 14 • Frank Bajak, *US House panel taps defunct startup for Facebook files*,
15 Associated Press (Oct. 3, 2019),
16 <https://apnews.com/article/3fd3827537904c45a467b7c4b31a5d31>.
- 17 • Christopher Carbone, *Facebook's Mark Zuckerberg used users' data as a*
18 *bargaining chip to consolidate company's power, leaked documents reportedly*
19 *reveal*, Fox News (Nov. 6, 2019), <https://www.foxnews.com/tech/facebook-mark-zuckerberg-user-data-bargaining-chip-leaked-documents>.
- 20 • Rob Price, *Facebook fought to keep a trove of thousands of explosive internal*
21 *documents and emails secret. They were just published online in full.*, Business
22 Insider (Nov. 6, 2019), <https://www.businessinsider.com/facebook-internal-documents-executive-emails-published-six4three-court-leak-2019-11>.
- 23 • Matthew Ingram, *Disinformation still running rampant on Facebook, study*
24 *says*, Columbia Journalism Review (Nov. 7, 2019),
25 https://www.cjr.org/the_media_today/disinformation-facebook.php.

24 9. Facebook itself has publicly addressed the substance of the documents.

25 *Response to Six4Three Documents*, Facebook (Dec. 5, 2018),

26 <https://about.fb.com/news/2018/12/response-to-six4three-documents/>.

1 10. Plaintiffs' first consolidated complaint, publicly filed on February 22, 2019,
 2 references some of the purportedly confidential documents referenced in these articles. First
 3 Amended Consolidated Complaint at ¶¶ 497, 510, 566, 744, 749, Dkt. No. 257. Facebook has
 4 not objected to the references to those documents or attempted to seal them. *See, e.g.*,
 5 Facebook's Answer to Plaintiffs' First Amended Complaint, Dkt. No. 373.

6 11. On April 3, 2020, Facebook produced some documents identical to those posted
 7 publicly and discussed in the articles identified above in ¶¶ 4-8. Facebook designated the
 8 documents "confidential" pursuant to the Protective Order in this action.

9 12. When Plaintiffs filed Exhibit C to Dkt. No. 526, they attached the version of
 10 the document made publicly available by NBC News on November 6, 2019. *See* ¶ 7.

11 13. A true and correct copy of a letter from Plaintiffs to Facebook dated August 21,
 12 2020 challenging the confidentiality of certain documents Facebook has produced and
 13 designated confidential in this action is attached hereto as Exhibit 1.

14 14. A true and correct copy of the February 16, 2021 Joint Statement Regarding
 15 Competing Protective Orders in *Styleform IT v. Facebook, Inc., et al.*, Case No. CGC-18-
 16 571075, pending in the Superior Court of California, County of San Francisco, is attached
 17 hereto as Exhibit 2.

18 15. A true and correct copy of the February 17, 2021 Order re Joint Statement
 19 Regarding Competing Proposed Protective Orders in *Styleform IT v. Facebook, Inc., et al.*,
 20 Case No. CGC-18-571075, pending in the Superior Court of California, County of San
 21 Francisco, is attached hereto as Exhibit 3.

22 16. I declare under penalty of perjury under the laws of the United States and the
 23 State of California that the foregoing is true and correct and to the best of my knowledge. This
 24 declaration was executed in Oakland, California.

25
 26 Date: April 19, 2021

By: /s/ Matthew S. Melamed

27 Matthew S. Melamed